

From: David Rosenthal
To: Microsoft ATR
Date: 1/27/02 7:27pm
Subject: Microsoft Settlement

I object to the proposed settlement.

I am an engineer with more than 25 years experience of the software business. I have worked in companies that cooperate with Microsoft, companies that compete with Microsoft, and companies that do both. I am currently employed by Sun Microsystems. My objections are my own and would not necessarily be shared by Sun's management.

My objection to the proposed settlement is as a consumer over many years of Microsoft's products. Microsoft has been determined to have harmed the consumer in that it maintained a monopoly through various illegal tactics, principally by tying other products to its monopoly operating system. The proposed settlement does nothing to remedy the harm which I and other consumers suffered in the past, nor to prevent Microsoft inflicting similar harm in the future.

A key enabler of Microsoft's tying of additional products to the operating system is the ability, through the terms of the End Use License Agreement (EULA), to disclaim all liability for the correct and safe functioning of the individual products and the bundle resulting from the tying. Microsoft's monopoly not merely deprives customers of choice in operating systems, it also deprives them of remedy when the product they are forced to choose fails to perform as they might reasonably expect it to, let alone as Microsoft claims it will.

The harm done to consumers through the security flaws in Microsoft's products is the stuff of legend. The estimates of the cost of even a single security flaw that allows a virus to propagate range into the billions.

I urge that any settlement of this case include a remedy that reduces this enormous cost foisted onto consumers. Microsoft should be prevented from disclaiming liability for the performance of any product for which they have a monopoly, or which is tied to a product for which they have a monopoly.

For any product that is available to consumers of Microsoft and non-Microsoft products on the same terms, Microsoft should continue to be able to disclaim product liability, as their competitors do. Consumers of these products have a choice

of operating systems and, if Microsoft's fail to work as expected, can switch.

For any product that is an operating system, or which is bundled with an operating system, or which is available only on Microsoft's operating systems, or which is available on more favorable terms on Microsoft's operating systems, the customer has no choice or faces exorbitant switching costs. In these cases, where Microsoft is exploiting a monopoly that it has sustained using illegal tactics, the consumer should be given an effective remedy if the product fails.

The essential effect of this condition would be to raise the cost to Microsoft of exploiting its illegally maintained monopoly by tying additional functions to its operating system. At present, the cost of doing is negligible. With this condition, the additional cost of bundling a new function into the system over distributing it on the same terms on all platforms would be very significant - if it was bundled Microsoft would have to stand behind it.

Microsoft will, no doubt, argue that if they were unable to disclaim liability for the performance of their operating system they would have to raise prices to cover the cost of the liability. But note that this would not increase the cost to consumers. They already bear the cost of the liability - Microsoft's EULA transfers it to them. They would pay more for the operating system and less to cover its failure to operate as they have a right to expect. It would be hard for the government to argue that it was in consumer's interests to prevent them from seeking a remedy when Microsoft's products failed them.

Consumers have suffered for many years as Microsoft's products have failed to live up to their advertised reliability and security. They have had no choice but to continue buying and using them, as Microsoft used illegal tactics to maintain its monopoly. They have had no remedy under the EULA. Please take this opportunity to provide consumers with a real remedy.

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